SUPREME COURT, U. S.

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1968

No. 335

MARTIN ANDERSEN, ET AL.,
Appellants,

vs.

STATE OF FLORIDA,
Appellee.

On Appeal from the Supreme Court of the State of Florida

JURISDICTIONAL STATEMENT

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No. _____

MARTIN ANDERSEN, ET AL.,
Appellants,

vs.

STATE OF FLORIDA,
Appellee.

On Appeal from the Supreme Court
of the State of Florida

JURISDICTIONAL STATEMENT

Appellants, Martin Andersen, et al., appeal the judgment of the Supreme Court of Florida, entered March 27, 1968, and present this statement in order to demonstrate the jurisdiction of this Court and the substantial nature of the federal issues involved.

PREFACE

Citations to the Transcript of Record (R.) will be as follows: The first number will indicate the document number as reflected in the index to the transcript prepared by the Clerk of the Supreme Court of Florida. The second number will indicate the page number as it appeared on the original record on appeal.

OPINIONS BELOW

The opinion of the Circuit Court of Orange County, Florida is unreported and set forth in Appendix A *infra*. The opinion of the Supreme Court of Florida reversing the judgment of the circuit court is reported in 208 So.2d 814 and is set forth in Appendix B *infra*. The supreme court's order and mandate denying petition for rehearing is set forth in Appendix C *infra*.

JURISDICTION

This action was commenced by the filing of three complaints in the Circuit Court of Orange County, Florida which sought to enjoin the collection of certain intangible personal property taxes for the year 1966. It was alleged that the Class D intangible tax imposed upon appellants'[1] long-term unsecured promissory notes pursuant to Fla. Stat. § 199.141(4) (1965) is unconstitutional under both the state and federal constitutions. (R. 3-1 - 3-22)

The Circuit Court of Orange County decided the question in favor of the plaintiffs (appellants) and rendered final judgment declaring the tax unconstitutional under both the Florida constitution and under the fourteenth amendment to the United States Constitution. (R. 2-27; *infra* Appendix A)

The State of Florida, through the attorney general, thereafter took an appeal to the Supreme Court of Florida (R. 1), which reversed the judgment of the circuit court and directed that the complaints in the three suits be dismissed. (R. 4; *infra* Appendix B) By order dated April 30, 1968 the Florida supreme court

[1] The three parties plaintiff in this action (appellants herein) include: Martin Andersen (R. 3-1); Martin Andersen, Trustee for Jeannette Andersen (R. 3-8); Martin Andersen, Trustee for Marcia Andersen Murphy (R. 3-15).

denied petition for rehearing (R. 6) and issued its mandate. (*Infra* Appendix C) Notice of appeal was filed in the Supreme Court of Florida by the appellants herein on June 18, 1968. (R. 7)

Jurisdiction to review a judgment of the highest court of a state by appeal is conferred on this Court by 28 U.S.C. § 1257(2) and 2101(c). That such jurisdiction exists in the circumstances of this case is sustained by the following decisions: *American Oil Co.* v. *Neill*, 380 U.S. 451 (1965); *Louisville Gas & E. Co.* v. *Coleman*, 277 U.S. 32 (1928).

STATUTES INVOLVED

The pertinent statutes involved in this appeal are:

(1) Fla. Stat. § 199.022 (1965).

(2) Fla. Stat. § 199.141 (1965).

These statutes appear in Volume I, Florida Statutes 1965 at pp. 841-845. Under Florida's continuous revision system, the current statutes now appear in Vol. I of the 1967 statutes at pp. 829-833.

The portions of said statutes which are essential to this Court's understanding of the issues herein are set forth verbatim in Appendix D *infra*.

QUESTIONS PRESENTED

Whether Fla. Stat. § 199.141(4) (1965), which provides for a one mill per year tax upon Class D intangible personal property, is unconstitutional *as applied* to appellants' long-term unsecured promissory notes. More specifically:

1. Whether said tax constitutes an unreasonable and arbitrary classification in violation of the equal protection provision of the fourteenth amendment to the United States Constitution.

2. Whether the burden created by said tax upon appellants is so great when compared with other classifications as to be in violation of the due process provision of the fourteenth amendment to the United States Constitution.

STATEMENT

Appellants brought suit in the Circuit Court of Orange County, Florida to enjoin the collection of Class D intangible personal property taxes for the year 1966 upon their long-term unsecured promissory notes. Since all three complaints were virtually identical except for the amounts involved, only the allegations in one complaint will be discussed herein.[1]

Appellant, Martin Andersen, held 15 promissory notes with a total face value of $10,521,396. These notes were unsecured and were, therefore, classified as Class D intangible personal property. Fla. Stat. § 199.022; *infra* p. D-1. Pursuant to Fla. Stat. § 199.141(4), *infra* p. D-3, these Class D intangibles are subject to an annual tax of one mill which, for the duration of said notes would total over $100,000. If, however, these notes were secured by realty either within or without the State of Florida, they would be taxed as Class C intangibles and would be subject only to a one-time tax of two mills. Fla. Stat. § 199.022(3) and § 199.141(3)(a) and (e), *infra*. In this event, the total tax upon said notes would amount to only $21,042.[2]

Accordingly, plaintiffs alleged in their complaints before the circuit court that there is no justification

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[1]By order of the circuit court (*infra* p. A-3) the three actions were consolidated and were treated together for the purpose of appeal to the Supreme Court of Florida.

[2]For a detailed spread sheet analysis of the above, see Exhibit "B" to the appellants' complaint. (R. 3-7)

from a tax standpoint for distinguishing between these unsecured notes and notes secured by either Florida or out-of-state realty. Therefore, plaintiffs by their complaints alleged that said statutes as applied "are arbitrary and capricious under both the Florida and federal constitutions, and to tax plaintiffs' notes annually at one mill rather than once at two mills is violative of the uniform and equal provisions of Article XI, Section 1, of the Florida constitution and the equal protection and due process clauses of the fourteenth amendment to the federal constitution." (R. 3-2)

Upon motion for judgment on the pleadings, the circuit court held in favor of plaintiffs and declared the tax imposed by Fla. Stat. § 199.141(4) to be unconstitutional as a violation of both the Florida constitution and the equal protection and due process requirements of the fourteenth amendment to the federal constitution. (R. 2-27; *infra* p. A-3)

Thereafter, the State of Florida, through the attorney general, took an appeal to the Supreme Court of Florida seeking reversal of the circuit court's ruling. (R. 1) The questions presented on the appeal to that court were the same as those raised in the pleadings and before the lower court. These federal constitutional questions were specifically raised by the Assignments of Error (R. 2-33), the briefs submitted by counsel, and their respective oral arguments.

The Supreme Court of Florida specifically decided against the plaintiffs (appellants herein) and reversed the judgment of the circuit court. The court directed that the complaints in the three suits be dismissed, and thereby rejected plaintiffs' contentions that said tax is repugnant to the fourteenth amendment to the United States Constitution.

A petition for rehearing was filed which again raised the federal constitutional issues. (R. 5) By or-

der dated April 30, 1968, the Supreme Court of Florida denied the petition and issued its mandate. (*Infra* p. C-1) Thus, the judgment and opinion of the Supreme Court of Florida is final.

FEDERAL QUESTIONS ARE SUBSTANTIAL

This appeal presents important constitutional questions concerning the extent to which a state may classify property for the purpose of taxation within the limitations of the due process and equal protection provisions of the fourteenth amendment.

As previously noted, appellant Martin Andersen held 15 long-term unsecured notes in the total amount of $10,521,396. Since these notes were unsecured by any mortgage or other lien upon real property either within or without the State of Florida, they were classified as Class D intangibles, and were subject, therefore, to a tax of one mill every year. Fla. Stat. § 199.022 and 199.141(4) (1965). This one mill annual Class D tax would amount to over $100,000 over the duration of said notes. If, however, the notes had been secured by a lien on real estate, they would be classified as Class C intangibles and would be subject only to the one-time tax of two mills. Fla. Stat. § 199.022(3) and 199.141(3)(a)(e) (1965). If the notes were taxed in this manner, the total tax would amount to only $21,042.

Thus, the essential question presented by this appeal becomes whether appellant may be required to pay an additional $80,000 in intangible taxes by mere reason of the fact that said notes were not secured by a lien upon real estate. Appellants submit that this question is of substantial public importance to the taxpayers of the State of Florida because of its affect upon the numerous other holders of standard commer-

cial obligations and other taxpayers similarly situated. Moreover, the question here presented has never been decided by this Court and raises serious issues with respect to the protection of the fourteenth amendment against a state's arbitrary and unreasonable classification and taxation of intangible personal property.

(1) Equal Protection —

The fourteenth amendment was not intended to compel states to adopt an iron rule of equal taxation, *Bell's Gap R.R. Co.* v. *Pennsylvania*, 134 U.S. 232 (1890); and, state legislatures have considerable latitude in classifying property for the purpose of taxation. But there is a point beyond which a state cannot go without violating equal protection, and a state must therefore proceed upon a rational basis and may not resort to a classification that is palpably arbitrary. *Allied Stores of Ohio* v. *Bowers*, 358 U.S. 522 (1959).

Thus, it has been generally stated that property can be segregated into classes only by reason of differences in it which afford a ground for different treatment in reference to taxation. 1 Cooley, *Taxation* § 335 (4th Ed. 1924). It is appellants' contention that the legislation here questioned goes beyond the point of reasonable classification and is patently arbitrary as applied to the notes held by appellants.

In order to fully recognize the arbitrary nature of this classification it is necessary to distinguish between the two subdivisions of Class C intangibles. Class C-1 intangibles include obligations secured by realty *within* the State of Florida. This is a familiar method of classifying intangibles for the purpose of taxation which has been upheld on various grounds. See *e.g.*, *Mutual Benefit Ins. Co.* v. *Martin County*, 116 N.W. 572 (Minn. 1908) (ease of collection theory); *State*

v. *Gay*, 46 So.2d 165 (Fla. 1950) (extra benefits from the sovereign theory). Appellants, therefore, do not question the validity of the Class D intangible tax when compared only with Class C-1.

However, in 1965 the legislature of the State of Florida created Class C-2 and provided for a one-time two mill tax upon such obligations which are secured by realty *outside* the State of Florida. The apparent motive behind this sub-classification was to equalize the tax treatment between obligations secured by Florida realty and those secured by out-of-state real property. *State* v. *Andersen*, 208 So.2d 814, 818 (Fla. 1968); *infra* p. B-9. But, mere equality between the two subdivisions of Class C intangibles to the exclusion of the remainder (Class D) does not justify the inherent discrimination and heavier tax burden upon the latter.

Endless quotations on the scope of the equal protection clause generally add little to the solution of a given case. The crux of any such statement would be that classification for the purpose of taxation must rest upon some difference which is significant from the standpoint of taxation. With this in mind, it should be quite obvious that the classification here in question is not reasonable within the bounds of the equal protection clause of the fourteenth amendment. There is simply no rational difference from a tax standpoint between Class C-2 and Class D intangibles which would justify the much greater tax upon the latter.

Neither of the two basic theories mentioned previously will justify the different tax treatment given Class C-2 and Class D intangibles. The "extra benefits from the sovereign" theory is certainly not applicable, because neither class of intangibles receives the protection of the Florida recording laws. So also, the "ease of collection" theory has no relevance to this classifi-

cation, because that theory applies only to obligations secured by realty within the state.

The ease of collection theory is founded solely upon the assumption that an obligation secured by realty *within* the state is better exposed to *that* state's taxing authorities. When the owner records his security he thereby exposes the underlying taxable obligation and provides a practical means of collecting the tax at the time of recording. In this respect, the one-time two mill tax upon notes secured by Florida realty (Class C-1) may be justified as a reasonable classification when compared with appellants' notes (Class D). But, this reasoning does not support the same "tax break" given the C-2 classification, because these obligations are no more exposed to the Florida taxing authorities than are Class D intangibles. Nor do they provide a practical means of collecting the tax. The fact that an obligation is secured by out-of-state realty (C-2), which security is possibly recorded in another state, does not (under any stretch of the imagination) overcome practical difficulties in ascertaining and collecting an intangible tax.[1]

Thus, in relation to the object of providing a practical means of assessing and taxing such intangible

[1] In its opinion, the Florida Supreme Court attempted to justify the discrimination between Class C-2 and Class D upon a novel theory that the recording of security in another state somehow enhances the ability of Florida tax authorities to assess and collect the intangible tax upon the underlying obligation. 208 So.2d 814, 818-19; *infra* p. B-11. Appellants are at a complete loss, however, to see how a note secured by a recorded mortgage in the State of Alaska, for example, is more exposed to Florida tax officials than an unsecured note in the same state. Appellants would submit that the court's real reason for refusing to strike down the tax upon appellants' notes is contained in its statement that, "The 'catch all' Class D tax revenues constitute a very large portion of the total of the state's intangible tax revenue." *Id.* at 819; *infra* p. B-13. Of course, appellants need not argue that this is an insufficient reason for upholding an otherwise arbitrary and discriminatory tax classification.

property, there is no distinguishable difference between Class C-2 and Class D obligations. For example, what relevant difference exists between 15 long-term notes secured by out-of-state realty (C-2) and an equal number of notes of the same duration and value which are unsecured or are secured by some non-recordable asset (D)? What logical basis exists for taxing appellants' unsecured notes by an amount five times greater than notes similar in every respect except that they are secured by realty outside the state? Appellants submit there is no relevant difference from the standpoint of taxation which could sustain this discriminatory classification. See *Adams* v. *Kuykendall*, 35 So. 830 (Miss. 1904); *Hamilton* v. *Wilson*, 59 Pac. 1069 (Kan. 1900); *State ex rel Price* v. *Frillman*, 118 N.E. 109 (Ohio 1917). In other words, there is simply no state of facts which reasonably could be conceived to sustain this tax classification.

Finally, appellants object to the manner in which the Florida Supreme Court attempts to smooth over and confuse the issue presented by this appeal. In its opinion, the court makes much of the fact that in some situations the Class D tax may be less than the Class C-2 tax. *Infra* p. B-13. This would be true, however, only with obligations maturing in less than two years. The court conveniently overlooks the numerous and probably more significant items of commercial paper which mature in excess of two years and are therefore subject to the higher Class D tax.

In any event, appellants do not attack the Class D tax in general or upon its face. Rather, appellants have consistently contested the tax only as *applied* to their notes and to obligations of other taxpayers similarly situated. In this respect, even the Florida Supreme Court recognized that, "It is easy to make out a case showing an extreme example of the applicability of the

Class D tax projected over a period of 15 years . . ." *Infra* p. B-14. With this admission in mind, it should not be difficult to conclude that the Class D tax as applied to appellants' property is patently arbitrary and unconstitutional under the fourteenth amendment.

(2) Due Process —

Appellants acknowledge, of course, that a state may impose unequal tax burdens without necessarily violating constitutional standards. *Dane* v. *Jackson*, 256 U.S. 589, 598-99 (1921). However, it is equally clear that where a state tax law results in such flagrant and palpable inequality between the burden imposed and the benefit received as to amount to the arbitrary taking of property without compensation, it will be held to conflict with the fourteenth amendment. *Id.* Appellants submit that the inequality of tax burden in the case at bar is so great in terms of benefit received that it amounts to a violation of due process of law as well as equal protection.

The essence of the due process problem presented by this statutory classification is that Class D taxpayers are taxed according to the duration of their intangibles (one mill per year), while Class C-2 taxpayers are taxed without regard to duration (once at two mills). Thus, when comparing long-term obligations, as here, Class C-2 note holders are given a virtual exemption when compared with Class D taxpayers. The extent of this exemption and tax inequality depends naturally upon the duration of the notes in question. In the case at bar, for example, appellants' Class D notes are taxed at a ratio of 5 to 1 when compared with similar Class C-2 obligations. Yet, despite this significant disparity in tax burden, there is no corresponding justification in terms of benefits received. Class C-2 note holders enjoy the same rights and priv-

ileges in the State of Florida as do holders of Class D obligations.

The importance of a plausible ratio between the burden imposed and the benefit received is well stated in Cooley, *Constitutional Limitations*, 723 (1903) (quoting from *Woodridge* v. *Detroit*, 8 Mich. 274, 301):

> "To compel individuals to contribute money to the use of the public, without reference to any common ratio, and without requiring the sums paid by one piece or kind of property, or by one person, to bear any relation whatever to that paid by another, is, it seems to me, to make a forced contribution, not a tax, duty, or impost, within the sense of these terms, as applied to the exercise of powers by any enlightened or responsible government."

In sum, appellants believe the disparate tax burden imposed upon their long-term notes amounts, in practical effect, to a forced contribution by them without regard to a common ratio or any real difference from a tax standpoint. See *Cache County* v. *Jensen*, 61 Pac. 303 (Utah 1900); *State* v. *Crosson*, 190 Pac. 922 (Idaho 1920). As such, the collection of said tax from appellants pursuant to Fla. Stat. § 199.141(4) amounts to an arbitrary taking of property without compensation in violation of the due process clause of the fourteenth amendment.

CONCLUSION

For the reasons stated, the questions presented by this appeal are substantial and are of public importance. It is respectfully submitted that probable jurisdiction should be noted.

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Attorneys for Appellants

CERTIFICATE OF SERVICE

I, William Y. Akerman, attorney for the appellants herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the ..... day of July 1968 all parties required to be served have been served, copies of the foregoing Jurisdictional Statement having been mailed in duly addressed envelopes, with first class postage prepaid, to the appellee's attorneys of record, as follows:

TO: Earl Faircloth, Attorney General
The Capitol
Tallahassee, Florida 32304

TO: Fred M. Burns, Assistant Attorney General
The Capitol
Tallahassee, Florida 32304

TO: Edward D. Cowart, Assistant Attorney General
The Capitol
Tallahassee, Florida 32304

William Y. Akerman

APPENDIX A

Opinion of The Circuit Court of Orange County

MARTIN ANDERSEN,
Plaintiff,

v.

HELEN BENNETT,
Tax Assessor for
Orange County, Florida,
Defendant.

CHANCERY NO. 663811

MARTIN ANDERSEN,
as Trustee for
JEANNETTE
ANDERSEN
Plaintiff,

v.

HELEN BENNETT,
as County Assessor of
Taxes for Orange
County, Florida,
Defendant.

CHANCERY NO. 663812

MARTIN ANDERSEN,
Trustee for MARCIA
ANDERSEN MURPHY,
Plaintiff,

v.

HELEN BENNETT,
Tax Assessor for Orange
County, Florida,
Defendant.

CHANCERY NO. 663813

FINAL JUDGMENT

These three actions challenge the constitutionality of the State's Class D intangible tax as it applies to unsecured promissory notes taki..g three or more years to mature.

The defendant tax assessor did not appear and the Clerk duly entered a default against her successor in office. The Attorney General of the State of Florida received copies of the complaints that plaintiffs served upon the State's Attorney pursuant to § 87.17 Fla. Stat. (1965). The Attorney General moved to dismiss for failure to state a cause of action and for improper venue, joining with that motion an answer, admitting plaintiff's factual allegations for purposes of this litigation. Plaintiffs subsequently filed motions for judgment on the pleadings and brought them on for hearing on February 9, 1967.

At the hearing, plaintiffs moved to consolidate the three actions. The Attorney General joined in that motion on the understanding that the record-on-appeal would take up all three complaints. The Attorney General did not formally move to intervene as a party defendant; however, both counsel for plaintiffs and for the Attorney General agreed that the state's interests were properly represented and that the Court should proceed straightaway to a decision on the merits. The venue question was also withdrawn by agreement of the parties.

The complaints attacked the Class D intangible tax under the "equal protection" and "due process" provisions of the Fourteenth Amendment of the Federal Constitution and the "uniform and equal" provision of Article IX, Section 1, of the Florida Constitution.

At the hearing, however, the parties also measured the Class D tax against the equal protection and due

process requirements of Sections 1 and 12 of the Florida Constitution's Declaration of Rights.

Now, therefore, having considered the arguments and briefs of counsel, and being otherwise duly advised in the premises, it is

ORDERED,

1. That the three actions be consolidated.

2. That the Class D intangible tax imposed by § 199.141 (4) Fla. Stat. (1965) upon plaintiffs' unsecured promissory notes referred to in the complaints (all of which take three or more years to mature) be and the same is hereby declared unconstitutional upon the following grounds:

(a) When compared with Class C-2 intangibles, § 199.022 (3) (b), Class D intangibles, § 199.022 (4), constitute an unreasonable and arbitrary classification; therefore the annual one-mill Class D tax imposed by § 199.141 (4) violates the uniform and equal provision of Article IX, Section 1, of the Florida Constitution and the equal protection and due process requirements of Sections 1 and 12 of the Declaration of Rights of the Florida Constitution and of the Fourteenth Amendment of the Federal Constitution.

(b) When compared with Class C-1 intangibles, § 199.022(3)(a), Class D intangibles constitute an unreasonable and arbitrary classification; therefore, the annual one-mill tax imposed by § 199.141(4) violates the uniform and equal provision of Article IX, Section 1, of the Florida Constitution and the equal protection and due process requirements of Sections 1 and 12 of the Declaration of Rights of the Florida Constitution and of the Fourteenth Amendment of the Federal Constitution.

(c) Alternatively, even if Class D constitutes a valid classification when compared with Class C-1, the

burden of the annual one-mill Class D tax is, without sufficient justification, so much greater in the cases at bar than the burden of the one-time two-mill tax under Class C-1 that it violates the due process requirements of Section 12 of the Declaration of Rights of the Florida Constitution and the Fourteenth Amendment of the Federal Constitution.

3. Defendant tax assessor and its successors and privies are hereby permanently enjoined from assessing or in any way attempting to assess or collect the annual one-mill tax prescribed by § 199.141(4) Fla. Stat. (1965) insofar as concerns plaintiffs' unsecured promissory notes identified in the three complaints in these consolidated actions.

Done and Ordered in chambers in Orlando, Florida this 28th day of Feb., 1967.

/s/ Richard H. Cooper
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been served upon Fred M. Burns, Assistant Attorney General, State of Florida, Tallahassee, Florida, and Robert Dyer, of Akerman, Senterfitt, Eidson, Mesmer & Robbinson, P. O. Box 231, Orlando, Florida, this 1st day of March, 1967.

APPENDIX B

Opinion of The Supreme Court of Florida

IN THE SUPREME COURT OF FLORIDA
JANUARY TERM, A.D. 1968

STATE OF FLORIDA,
Appellant,

vs.

MARTIN ANDERSEN,
Appellee.

STATE OF FLORIDA,
Appellant,

vs.

MARTIN ANDERSEN,
as Trustee for
Jeannette Andersen,
Appellee.

CASE NO. 36,241

(Three cases consolidated)

STATE OF FLORIDA,
Appellant,

vs.

MARTIN ANDERSEN,
as Trustee for
Marcia Andersen Murphy,
Appellee.

Opinion filed March 27, 1968

Appeals from the Circuit Court for Orange County, Richard H. Cooper, Judge

Earl Faircloth, Attorney General, Fred M. Burns and Edward D. Cowart, Assistant Attorneys General, for Appellant

Lawrence E. Dolan of Akerman, Senterfitt, Eidson, Mesmer & Robbinson, for Appellees

ERVIN, J.

Martin Andersen, individually and as Trustee for Jeannette Andersen and also as Trustee for Marcia Andersen Murphy, brought suits in the Circuit Court of Orange County, Florida to enjoin the collection of Class D intangible personal property taxes for the year 1966 upon certain promissory notes, as follows:

(1) Fifteen notes of a series executed by the Sentinel Star Company in favor of Martin Andersen, twelve of which are in the principal amount of $584,522.00, each. These twelve mature consecutively, the first on August 31, 1968 and the remaining eleven on August 31st of each year thereafter, i.e., until August 31, 1979. The last three notes are in the principal sums of $800,000; $1,200,000 and $1,507,132, respectively, all maturing on August 31, 1980. Interest on these notes is at the rate of four per cent per annum, except as to the last five notes of the series the interest is increased to five per cent per annum after August 31, 1975. The total of the principal of these fifteen notes is $10,521,396.

(2) Thirteen notes of a series executed by the Sentinel Star Company in favor of Martin Andersen as Trustee for Jeannette Andersen; twelve of which are in the principal amount of $242,179.50 each. These twelve mature consecutively, the first on August 31, 1968, and the remaining eleven on August 31st of each year thereafter, i.e., until August 31, 1979. The thirteenth note is in the principal sum of $1,453,077 and matures August 31, 1980. Interest on these notes is at the rate of four per cent per annum, except as to the last five notes of the series interest is increased to five per cent per annum after August 31, 1975. The total of the principal of these notes is $4,359,231.00.

(3) Thirteen promissory notes of a series executed by the Sentinel Star Company in favor of Martin Andersen, Trustee for Marcia Andersen Murphy; twelve of

which are in the principal amount of $121,076.55 each. These twelve mature consecutively, the first on August 31, 1968 and the remaining eleven on August 31st of each year thereafter, i.e., until August 31, 1979. The thirteenth note is in the principal sum of $726,459.30 and matures August 31, 1980. Interest on these notes is at the rate of four per cent per annum, except as to the last five notes of the series interest is increased to five per cent per annum after August 31, 1975. The total of the principal of these notes is $2,179,377.90.

In his suit the plaintiff, Martin Andersen, alleges his promissory notes:

> ". . . are in no wise secured by a lien upon real estate and therefore were returned as 'Class D intangible personal property,' as that term is defined in Section 199.022 Florida Statutes (1965) . . . Were these notes classified as C-1 or C-2 intangible personal property, they would be taxed two mills, which tax would be levied only once and would amount to a total of only $21,042.00. But because these fifteen notes are classified as Class D intangibles and are taxed annually at one mill on their just valuation, plaintiff will be required to pay over the next fifteen years a total of $100,668.00 . . .
>
> "5. There is no justification for distinguishing between the obligations represented by plaintiff's unsecured notes and obligations represented by notes secured by a lien on either Florida or out-of-state real property. Therefore, the classifications created by Sections 199.022(3)(a) [Class C-1], 199.022(3)(b) [Class C-2], and 199.022(4) [Class D], are arbitrary and capricious under both the Flor-

ida and Federal Constitutions; and to tax plaintiff's notes annually at one mill rather than once at two mills is violative of the uniform and equal provisions of Article IX, Section 1, of the Florida Constitution and the equal protection and due process clauses of the Fourteenth Amendment of the Federal Constitution.

"6. Alternatively, the annual one mill tax imposed on plaintiff's Class D obligations is violative of the uniform and equal provision of Article IX, Section 1, of the Florida Constitution because the rate of taxation imposed on Class D obligations is greater than the rates imposed on the obligations recently classified as C-2 by the Legislature."

Similar allegations appear in the suits of Martin Andersen as Trustee. In the suit relating to Jeannette Andersen it is contended that if the notes involved therein were classed C-1 or C-2 the intangible tax thereon levied only once would total $8,714.00; but classified as Class D intangibles and taxed one mill annually over the next fifteen years the total tax paid would be $41,709.00. In the suit relating to Marcia Andersen Murphy a two mill one time intangible personal property tax levy on the notes involved therein would amount to only $4,357.00, but a one mill intangible tax over the next fifteen years thereon would total $20,851.00.

The Tax Assessor of Orange County, Florida, who was named defendant in the suits, defaulted therein but the Attorney General having appeared in the cases pursuant to authority of statute (see Section 16.01, F.S.; State v. Kress & Co., 115 Fla. 189, 155 So. 823; 7 Am. Jur. 2d 7 *Attorney General* § 6.) filed motions to

dismiss and answers. On motion of plaintiffs, in which the Attorney General joined, the suits were consolidated. Plaintiffs moved the Circuit Court for judgment on the pleading. The Circuit Court entered its final judgment holding as to plaintiffs' unsecured promissory notes as follows:

> "(a) When compared with Class C-2 intangibles, § 199.0(3)(b), Class D intangibles, § 199.022(4), constitute an unreasonable and arbitrary classification; therefore the annual one-mill Class D tax imposed by § 199.141(4) violates the uniform and equal provision of Article IX, Section 1, of the Florida Constitution and the equal protection and due process requirements of Sections 1 and 12 of the Declaration of Rights of the Florida Constitution and of the Fourteenth Amendment of the Federal Constitution.
>
> "(b) When compared with Class C-1 intangibles, § 199.022(3)(a), Class D intangibles constitute an unreasonable and arbitrary classification; therefore, the annual one-mill tax imposed by § 199.141(4) violates the uniform and equal provision of Article IX, Section 1, of the Florida Constitution and the equal protection and due process requirements of Sections 1 and 12 of the Declaration of Rights of the Florida Constitution and of the Fourteenth Amendment of the Federal Constitution.
>
> "(c) Alternatively, even if Class D constitutes a valid classification when compared with Class C-1, the burden of the annual one-mill Class D tax is, without sufficient justification, so much greater in the cases at bar than

the burden of the one-time two-mill tax under Class C-1 that it violates the due process requirements of Section 12 of the Declaration of Rights of the Florida Constitution and the Fourteenth Amendment of the Federal Constitution.

"3. Defendant tax assessor and its [sic] successors and privies are hereby permanently enjoined from assessing or in any way attempting to assess or collect the annual one-mill tax prescribed by § 199.141(4) Fla. Stat. (1965) insofar as concerns plaintiffs' unsecured promissory notes identified in the three complaints in these consolidated actions."

The State, through the Attorney General, filed this appeal. We have jurisdiction of the appeal because the Circuit Court held Sections 199.022(4) and 199.141(4), F.S., unconstitutional insofar as they attempt to impose Class D intangible personal property taxes upon plaintiffs' unsecured promissory notes.

We disagree with the holding of the Circuit Court and reverse.

Pertinent constitutional and statutory provisions relating to Class D, Class C-1 and Class C-2 are as follows: Section 1, Article IX of the State Constitution provides in part:

"The Legislature shall provide for a uniform and equal rate of taxation, except that it may provide for special rate or rates on intangible property, but such special rate or rates shall not exceed two mills on the dollar of the assessed valuation of such intangible property; provided, that as to any obligations secured by mortgage, deed of trust, or other lien,

the Legislature may prescribe an intangible tax of not more than two (2) mills on the dollar, which shall be payable at the time such mortgage, deed of trust, or other lien is presented for recordation, said tax to be in lieu of all other intangible assessments on such obligations . . ."

Section 199.022, F.S. classifies for the purpose of taxation intangible personal property into four classes to be known as classes A, B, C [C-1, C-2] and D intangible personal property. Class A includes money deposited in banks and building, loan and saving associations, and legal tender notes, certificates of deposit, cashiers and certified checks, drafts and bills of exchange. Class B includes all corporate bonds and stocks, and all obligations dated prior to January 1, 1942 secured by mortgages or other liens upon real or personal estates situated in Florida. Class C includes:

"Class C-1, all notes, bonds, and other obligations bearing date subsequent to December 31, 1941, for payment of money which are secured by mortgage, deed of trust or other liens upon real property situated in Florida; provided that only that part of the value of the mortgage, deed of trust, or other lien, the real property of which is located within the state shall bear to the whole value of the real property described in said obligations shall be included.

"Class C-2, all notes, bonds and other obligations secured by mortgage, deed of trust or other liens on real property; provided that only that part of the value of the mortgage, deed of trust or other lien, the real property of which is located outside the state, shall

bear to the whole value of the real property described in said obligation shall be included in this category."

Class D includes all intangible personal property not embraced in classes A, B, C-1 or C-2.

Section 199.141, F.S., prescribes the rate or amount of intangible personal property taxes to be imposed upon said classes A, B, C-1 and D, viz.,

(1) On all Class A intangible personal property one tenth of one mill on the dollar of just valuation of such property payable annually.

(2) On all Class B intangible personal property one mill on the dollar of the just valuation payable annually.

(3) On all Class C-1 intangible personal property, two mills on the dollar of just valuation, which valuation shall be the principal amount of the obligation, and shall be payable only once at the time the mortgage, deed of trust or other lien covering real property situated in Florida securing such obligation is presented for recordation in the office of the clerk of the circuit court of the county where the property is situated. The statute provides detailed procedures to insure payment of the two mill tax.

(4) On all Class C-2 intangible personal property, "... two mills on the dollar of the just valuation of such class C-2 intangible personal property. The tax on said C-2 tangible personal property shall be paid only once to the tax collector within thirty days from the acquisition of said class C-2 intangible personal property. The comptroller shall prescribe forms to be used by the tax collector's office in connection with the payment of said

class C-2 intangible personal property tax, which said form shall provide the essential information necessary to compute the tax and also for a receipt to be given to the taxpayer upon payment thereof. The tax imposed by this subsection shall be the only intangible tax levied on such notes, bonds and other obligations under this chapter.

"If a note, bond, or other obligation secured by mortgage, deed of trust or other lien is on real property located both within the state and outside the state, full payment of all the intangible personal property tax due under this chapter shall be made at the time of the recording of the instrument, as provided above, for class C-1 intangible personal property."

(5) On all Class D intangible personal property one mill on the dollar of the just valuation payable annually. This latter is the tax the State maintains applies to Appellees' promissory notes.

The portion of paragraph numbered (4) quoted above relating to Class C-2 was inserted into Section 199.141, F.S. by the 1965 Legislature by the enactment of Chapter 65-389, which revised Chapter 199, relating to intangible personal property taxation.

Prior to the passage of the revision statute, Chapter 65-389, promissory notes having tax situs in Florida but secured by real estate situated outside the state were Class D intangibles and subject to the one mill intangible personal property tax payable annually. It is apparent that one of the objects of the 1965 Legislature in passing Chapter 65-389 was to treat similarly for intangible personal property taxation all obligations secured by mortgages or other liens irrespective of

whether the real properties encumbered by such mortgages or other liens were situate in Florida or outside the state, thereby counteracting the contention that if they remained in separate classes the constitutionality of the tax on those secured by real estate located outside of the state was doubtful. See First Federal Savings and Loan Association of St. Petersburg v. Dickinson, Comptroller (Fla.), 193 So.2d 607.

Section 1, Article IX of the State Constitution was amended in 1944 to provide for the single two mill on the dollar tax payable only once upon obligations secured by mortgages, deeds of trust, or other liens. This section, as so amended, was shortly thereafter implemented by legislation insofar as obligations secured by mortgages or liens on real property situated in Florida were concerned. However, not until the enactment of Chapter 65-389 was the same treatment accorded obligations now classed as C-2 intangibles.

The Circuit Court agreed with plaintiffs that obligations not secured by mortgages or other liens encumbering real property in Florida or elsewhere when compared with obligations so secured could not constitutionally be treated differently in classifications for intangible taxes.

For the reasons hereinafter set forth, we think the Legislature justifiably made a distinction between obligations so secured and those not so secured, and that the making of such distinction did not result in violating the constitutional provisions indicated by the Circuit Court.

The Appellees make no showing their unsecured promissory notes are supported by consideration moving to them involving a subject matter or a transaction or real property outside the state. It is obvious these promissory notes were given by the Sentinel Star Com-

pany to Appellees in consideration for the sale of a newspaper printing establishment and rights to the publication of certain newspapers in Orlando, Orange County, Florida. In other words, the notes resulted from a Florida transaction.

It is true that one of the foremost reasons for the 1944 constitutional amendment (HJR 348, 1943) treating obligations secured by real estate situate in Florida as a special class for intangible personal property taxation was to give the owners of such obligations a "tax break" and encourage investment in such obligations in Florida. This incentive was primarily intended to encourage mortgage loans for homes, commercial and industrial improvements and agricultural purposes essential to the growth needs of the state. See First Federal Savings and Loan Association of St. Petersburg v. Dickinson, supra. However, this was not the only reason. As in other states, it was found by the Florida tax collecting officials that providing for the collection of the two mills intangible personal property tax at the time of recording of mortgages or other liens securing such obligations, facilitated and made it much easier to enforce and collect the tax on such obligations.

It has also been found that such classification of intangibles likewise facilitates collection of intangible taxes upon secured obligations executed outside the state. Our Florida taxing authorities, from fragmentary leads concerning intangible securities owned and brought into the state by new residents and concerning those believed to be owned by Florida citizens, firms, corporations and financial institutions who are known to trade in out of state intangibles, are enabled by reason of the public recording laws of other states to check lien recordings in such states and discover the nature of many intangibles and whether they are taxable in Flor-

ida. Many owners of intangibles, knowing the taxing officials have this means of checking, return and pay intangible taxes who otherwise would not do so.

It has been held in certain cases that classifications are valid which overcome practical difficulties in ascertaining taxable intangibles and in facilitating or making easier collection of intangible taxes thereon. For example, in Mutual Benefit Ins. Co. v. Martin, 116 N.W. 572, at 574, the Minnesota Supreme Court noted that owners of bonds and notes had "not been in the habit of paying their proportionate share of the taxes" due to the "ease with which the existence of such property can be concealed from the tax officials." The Court then pointed out, however, that when a person records his mortgage he exposes his ownership to the tax officials. It said this "practical difficulty alone furnishes a basis for a classification, and justifies the Legislature in devising a special method for the taxation of the subjects of that class." A similar holding appears in Union Trust Co. v. Common Council of City of Detroit, 137 N.W. 122. There, the separate classification of mortgage credits for taxation purposes was upheld. Classes C-1 and C-2 serve to facilitate and make easier the enforcement and collection of intangibles due to the fact the recording laws of all states operate to identify and disclose secured obligations. Experience has proven that unless the tax is collected once and for all as an incident to or result of the recording of a lien securing an intangible it often will not be collected.

It would hardly seem fitting to strike down as unconstitutional the Class D tax which has been the "catch-all" tax on all intangible personal property not otherwise specifically classified and taxed, since its enactment in Chapter 15,789, Acts of 1931. There is more merit to the suggestion of the Attorney General

that if any of the classes of intangibles must be stricken as discriminatory, Class C-2 should be the one since it was the last classification enacted by the Legislature. The "catch-all" Class D tax revenues constitute a very large portion of the total of the state's intangible tax revenue.

The effect of striking down the Class D intangible tax, i.e., one mill on the dollar annually on unsecured obligations, and thereafter taxing them at the rate of two mills only once, as Appellees urge (assuming, of course, we have the power to legislatively recast the intangible tax statute to accomplish such result), is that all such obligations maturing three years or more after date would no longer be subject to intangible taxes. Such modification would create tax differences among all types of unsecure intangibles very difficult to justify.

Many secured obligations have maturities of less than two years' duration; nevertheless, they bear the single two mill intangible tax. It follows that as between Class D on the one hand and classes C-1 and C-2 there are instances where the tax is greater in the latter classes than in the former, depending upon the nature of the obligation. These instances are the converse of Appellees' contention that Class D intangibles bear the greater tax burden. It is impossible, of course, to provide complete uniformity and exactness in the impact of such intangible taxes due to the great variations in the maturities of taxable obligations.

The Appellees stress the fact that their series of promissory notes extend to 1980 and that if their ownership continues to that year they will have to pay annually an intangible tax of one mill, which over the fifteen-year period will aggregate a much larger sum than if they paid a two mill tax one time only. This is true,

but this contention overlooks the fact that there are literally thousands of items of commercial paper evidencing loans of banks maturing in much less than fifteen years which are often renewed, and the renewals are subject to the same one mill annual tax levy. It is easy to make out a case showing an extreme example of the applicability of the Class D tax projected over a period of fifteen years, but when such example is considered in the light of other situations and their variations, the claimed discrimination is not nearly so apparent. It is also quite true that if a note is made to mature at the end of a long period of time — even, say, fifty years — the annual one mill levy thereon if paid throughout will total in the aggregate at the end of the fifty years' period a much greater sum than if the note's maturity date was of short duration. But even with a long-time maturity obligation there is often the possibility of accelerated payment or discount and discharge of the obligation, or change of its state tax situs, thus avoiding the full impact of the tax long before the date of final maturity. It is impossible to avoid differences in the impact of an annual tax upon particular ownerships whether real or personal property or intangibles, depending upon length of ownership of the property taxed and other varying conditions.

The Legislature undoubtedly had in mind that quite frequently the impact of an intangible tax by the terms of the transaction is made to fall upon the maker of an obligation. Therefore the Legislature may have taken into account in the case of a secured promissory note that often the maker agrees to provide enough in the principal of a note to pay the intangible tax on the note while he also has to pay ad valorem tax on his pledged real estate. Quite often our laws, without violating constitutional uniformity and equal protection provisions, do not require two forms of taxation which

would have impact upon the same taxpayer. For example, our state has a gallonage tax on gasoline, but bulk gasoline in storage for resale in our state is not subjected to tangible personal property taxes. Similarly, on motor vehicles we pay only annual license taxes and no ad valorem taxes by virtue of a specific provision in the State Constitution (Section 13, Article IX). The Legislature may have reasoned that on mortgage notes mortgagors should not be burdened with the possibility of being required to provide for the payment of the highest rate of intangible taxes thereon while having at the same time to pay ad valorem taxes on their mortgaged property.

That tax burdens may be unequal is generally accepted. Dave v. Jackson, 256 U.S. 589, 599. Equal protection does not require identity of treatment. It only requires that the distinction have some relevance to the purpose for which the classification is made, and that the different treatments be not so disparate as to be wholly arbitrary. See Walters v. City of St. Louis, 347 U.S. 231, text 237. The prohibition against denial of equal protection was not intended

> ". . . 'to compel the states to adopt an iron rule of equal taxation' nor 'to prevent a state from adjusting its system of taxation in all proper and reasonable ways.' . . . The classification may be limited as to objects . . . if all persons subject to it are treated alike under like circumstances and conditions. . .
>
> ". . . 'but logical appropriateness of the inclusion or exclusion of objects or persons is not required. A classification may not be merely arbitrary, but necessarily there must be great freedom of discretion, even though it results in "illadvised, unequal and oppressive legislation." ' . . ."

Louis K. Liggett Company v. Amos, 104 Fla. 609, 141 So. 153, text 156 and 157. See 51 Am. Jur. *Taxation* § 152, p. 202.

In Green v. Walter (Fla.), 161 So.2d 830, text 833, we said

> "We are aware of no legal bar to taxation of intangible property in a category separate and apart from taxation of other property so long as the classification is not arbitrary or unreasonable and when all under like conditions are treated the same."

It is noted from Section 199.022(3), F.S., that as to both Class C-1 and Class C-2 "only that part of the value of the mortgage, deed of trust or other lien, the real property of which is located" either within or without the state shall be included in said categories in the proportion such value "bears to the whole value of the real property described in said obligations." This language negatives the argument that regardless of how small the value of the real estate pledged to secure an obligation may be in proportion to the principal amount of the obligation, nevertheless only the Class C-1 or Class C-2 tax is payable thereon. To the contrary, where the value of the real estate pledged to secure the obligation neither equals nor exceeds the principal amount of the obligation, the amount representing the deficit is subject to Class D intangible tax. The language just quoted makes it clear that the Class C-1 and C-2 taxes only apply to the extent an obligation is genuinely secured in terms of value by a pledge of real estate.

Our Constitution itself, in the proviso in Section 1, Article IX, makes a distinction between secured and unsecured intangibles, and specifically authorizes the Legislature to prescribe special rates of taxation on particular intangibles. We believe this is a real and not

an arbitrary distinction between such intangibles. We do not believe the Legislature was prohibited from removing the distinction between intangible obligations secured by pledges of real estate situate in Florida and those secured by pledges of real estate situated outside the state and thus eliminate doubts as to the constitutionality of such distinction. Nor do we believe such removal of the latter distinction immediately created an unequal classification with unsecured intangibles (Class D) for the reasons hereinbefore stated.

For the foregoing reasons we reverse the final decree and direct that the complaints in the three suits be dismissed.

Reversed.

CALDWELL, C. J., THOMAS, ROBERTS and DREW, JJ., SPECTOR, District Court Judge, and WHITE, Circuit Judge (Retired), concur

APPENDIX C

Mandate and Order

IN THE SUPREME COURT OF FLORIDA
JANUARY TERM A.D. 1968
TUESDAY, APRIL 30, A.D. 1968

STATE OF FLORIDA,
Appellant,
vs.
MARTIN ANDERSEN,
Appellee.

STATE OF FLORIDA,
Appellant,
vs.
MARTIN ANDERSEN,
Appellee.

CASE NO. 36,241
(Three Consolidated Appeals)

STATE OF FLORIDA,
Appellant,
vs.
MARTIN ANDERSEN,
Appellèe.

On consideration of the Petition for Rehearing filed by Attorneys for Appellee,

IT IS ORDERED by the Court that said petition be, and the same is hereby, denied.

A TRUE COPY,
TEST:
SID J. WHITE
CLERK SUPREME COURT

(THE MANDATE IN THE ABOVE CASES HAS TODAY BEEN ISSUED AND MAILED TO THE CLERK OF THE CIRCUIT COURT FOR ORANGE COUNTY)

APPENDIX D

Pertinent Portions of the Florida Statutes

(1965)

199.022 Classes of intangible personal property. — For the purpose of taxation intangible personal property is hereby divided into four classes to be known as class A, B, C and D, intangible personal property . . .[1]

(3) Class C intangible personal property shall include:

(a) Class C-1, all notes, bonds and other obligations bearing date subsequent to December 31, 1941, for payment of money which are secured by mortgage, deed of trust or other liens upon real property situated in Florida; provided that only that part of the value of the mortgage, deed of trust, or other lien, the real property of which is located within the state shall bear to the whole value of the real property described in said obligations shall be included.

(b) Class C-2, all notes, bonds and other obligations secured by mortgage, deed of trust or other liens on real property; provided that only that part of the value of the mortgage, deed of trust or other lien, the

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[1]Class A and B, which are not relevant to the issue presented by this appeal, include the following:

Class A — Money and certificates of deposit, etc. deposited in banks and other similar institutions.

Class B — Notes, bonds, and other obligations bearing date prior to January 1, 1942; and all bonds, stocks or shares of incorporated or unincorporated companies and mutual funds.

real property of which is located outside the state, shall bear to the whole value of the real property described in said obligation shall be included in this category.

(4) Class D intangible personal property shall include all intangible personal property not embraced in classes A, B or C.

199.141 Annual levy. — On and after January 1, 1942, there is hereby annually levied and assessed on all intangible personal property, to be assessed and collected as other taxes are assessed and collected and to be paid into the intangible tax fund of the state and apportioned therefrom as hereinafter set forth, the following tax: . . .

(3) (a) On all class C intangible personal property two mills on the dollar of the just valuation, which valuation shall be the principal amount of the indebtedness, evidenced by such obligation, which tax shall be due and payable when the mortgage, deed of trust or other lien is executed and shall be paid to the county tax collector before the mortgage, deed of trust or other lien securing such indebtedness is presented for recordation. Every person who shall take, receive or record any mortgage, deed of trust or other written specific lien in the nature of a mortgage upon real property situated in Florida shall pay the tax prescribed by this subsection in respect to the debt or obligation secured thereby, . . .

(e) On all class C-2 intangible personal property, two mills on the dollar of the just valuation of such class C-2 intangible personal property. The tax on said C-2 intangible personal property shall be paid to the tax collector within thirty days from the acquisition of said class C-2 intangible personal property. The comptroller shall prescribe forms to be used by the tax

collector's office in connection with the payment of said class C-2 intangible personal property tax, which said form shall provide the essential information necessary to compute the tax and also for a receipt to be given to the taxpayer upon payment thereof. The tax imposed by this subsection shall be the only intangible tax levied on such notes, bonds and other obligations under this chapter.

If a note, bond, or other obligation secured by mortgage, deed of trust or other lien is on real property located both within the state and outside the state, full payment of all the intangible personal property tax due under this chapter shall be made at the time of the recording of the instrument, as provided above, for class C-1 intangible personal property.

(4) On all class D intangible personal property one mill on the dollar of the just valuation.